April 5, 1989

AFFIDAVIT

Daniel Ellsberg, being duly sworn, deposes and says:

lucated at Harvard University, where I received a B.A., summa cum laude, in 1952 and a Ph.D. in Economics in 1962. In 1953-53 I was awarded a Woodrow Wilson Fellowship for study at King's College, Cambridge University, and in 1957-59 I was a member of the Society of Fellows, Harvard University. From 1954-57 I was an infantry officer in the U.S. Marine Corps.

My relevant background falls into several categories.

(a) I have spent a dozen years as a government official, researcher or consultant in the area of national security, working on nuclear war planning, the command and control of nuclear weapons, and Vietnam policy. For nine years I worked on those matters as a researcher for the Rand Corporation, Santa Monica, California, on contract for the U.S. Air Force and the Office of Secretary of Defense, and also as a direct consultant to the Office of Secretary of Defense, the State Department and the White House. In 1961 I drafted, as a consultant to the Secretary of Defense, the Kennedy Administration guidelines (Top Secret) for the operational war plans for general nuclear war.

In 1964-65 I was Special Assistant to the Assistant Secretary of Defense for International Security Affairs, with the "super-grade" GS-18: highest level in the Civil Service, the civilian equivalent to major general. In 1965-67, having volunteered for service in Vietnam, I served in the Embassy in Saigon with the grade of FSR-1, as Senior Liaison Officer, and as Special Assistant to the Deputy Ambassador with the duty of evaluating pacification.

In 1967-69, I was a member--as a consultant to the office of the Secretary of Defense from the Rand Corporation, to which I had returned--of a McNamara Task Force which produced a 43-volume Top Secret study entitled History of U.S. Decision-making in Vietnam 1945-68, later known as the Pentagon Papers. In late 1968 and early 1969 I was a consultant to the Special Assistant to the President for National Security Affairs, Henry Kissinger, on Vietnam options and initial governmental studies on Vietnam.

b) In 1969-70, as an employee of the Rand Corporation, I copied the entire McNamara Study--which was in my authorized

possession, since I had been given virtually exclusive access to it as a researcher--and gave it to the Chairman of the Senate Foreign Relations Committee, Senator Fulbright, in the expectation that it would be the basis for official hearings. In 1971, the hearings having been postponed several times and never held--and U.S. invasions of Cambodia and Laos having occurred in the interim--I gave a copy of the Study (except for four volumes on negotiations) to the New York Times. When the Times was subjected to an unprecedented injunction against printing excerpts from the study, I gave a copy to the Washington Post, and subsequently, in the face of several more injunctions, to more than a dozen other newspapers.

The Supreme Court soon voided the injunctions, but I was indicted, eventually on twelve federal felony counts for alleged violations of the espionage act (I was not charged with espionage, nor with any count alleging intent to harm the interests of the United States or to help a foreign power), theft and conspiracy. In 1973 all charges were dismissed with prejudice on the federal judge's finding of a pattern of governmental misconduct against me, referring to actions that led to the indictment and conviction of a number of White House employees and which figured in the impeachment proceedings against President Nixon.

c) Since 1973 my work has been public education, as a lecturer, writer, and political activist, primarily addressed to the risks of the nuclear arms race and of U.S. interventions abroad, as recently in Nicaragua. I have given college courses and seminars on these subjects--at Stanford, the Harvard Medical School and University of California at Irvine--and hundreds of lectures on college campuses.

I have also acted politically to reduce these risks, both in electoral campaigns, in Congressional lobbying, and as a speaker in many demonstrations. And as what I judge to be a essential complement to these activities, I have participated in several dozen actions of non-violent civil disobedience, or direct action. In many cases resulting from these activities I have raised the defense of "necessity," or "avoidance of harm," the legal elements of which argument--as I understand them from my study of the legal literature on this subject--express perfectly my motivations in undertaking the actions in question: which appear to correspond closely to the action and intentions at issue in this case.

I have also been called as an expert witness repeatedly in both state and federal court cases to testify on the subjects of the risks arising from the nuclear arms race or from U.S. military interventions, on the effects of secrecy on U.S. decisionmaking and on the democratic process, and on certain elements of the justification defense as raised by other defendants, in particular the potential impact of actions of civil disobedience. Most recently, I was an expert witness in the Massachusetts trial Commonwealth v. Amy Carter et al, April, 1987, which resulted in acquittal of all defendants who had occupied a University of

Massachusetts building in protest of CIA recruiting on campus, after the jury had heard testimony and judge's instructions on the justification defense.

I have studied the history of civil disobedience extensively and have lectured and written on the subject (see my Introduction to Joseph Daniels' A Year of Disobedience). But my primary knowledge of the subject is more direct. It is based not only on my own participation in actions like these, but on the experience that led up to that. I can testify, almost uniquely, from the perspective of a government researcher and consultant, a former government official, who felt the impact of such actions by others upon my own awareness and conscience, and who responded to their example by undertaking myself what I conceived to be a necessary act of non-violent, truth-telling civil disobedience, breaking secrecy regulations which I--mistakenly--believed to be grounded in federal law.

Furthermore, there is strong basis for the widely-held belief that my own action--crucially influenced by actions comparable to those on trial in this case--had a tangible effect, as I intended and hoped, on the ability of the American public, Congress and courts, to end both the deaths and the deceptions associated with U.S. involvement in the Vietnam war.

In the words of one law review article, "Daniel Ellsberg's releasing of the PENTAGON PAPERS arguably, at least, had a significant effect on the war."[1] The context of this statement is precisely the subject of my deposition here. The authors discuss the case of Brother John Simpson,[2] who destroyed draft files on Christmas Eve, 1970, "in an effort to impede the war in Southeast Asia," and who was barred by his trial judge from introducing evidence "that his actions were done to avert greater evil in the war zone" as part of a defense of necessity.

"The Court of Appeals for the Ninth Circuit, citing the A.L.I. Model Penal Code, recognized in Simpson the 'theoretical basis of the justification defense...that in many instances, society benefits when one acts to prevent another from intentionally or negligently causing injury to people or property.' The court said, however, that an essential element of the defense is a reasonable anticipation of a direct causal relationship between the otherwise criminal act and the avoidance of harm. The court concluded that it was unreasonable for Simpson to assume his actions might have a significant effect on the evils he wished to prevent because the war would obviously continue

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[1] Edward B. Arnolds and Norman F. Garland, "The Defense of Necessity in Criminal Law: The Right to Choose the Lesser Evil," Journal of Criminal Law and Criminology, Northwestern University School of Law, Vol. 65, No. 3, p. 300.

[2] United States v. Simpson, 460 F.2d 515 (9th Cir. 1972).

whether or not the San Jose draft board continued to function."[3]

In a footnote to the last sentence above, the authors comment: "Presumably Simpson offered to prove it was reasonable for him to believe these actions would have a significant effect. The court of appeals may have concluded from the record that no reasonable jury could make such a finding. But it is hardly clear that when respected persons in the community destroy records to protest a war these actions have no significant effect on the war policy of a country. Daniel Ellsberg's release of the PENTAGON PAPERS arguably, at least had a significant effect on the war."[4]

I did not, of course, destroy records; I released records, of American history that had been wrongfully withheld from the American Congress, courts and public. And the secrecy rules I broke turned out to be administrative regulations of the Executive branch--the sole basis for the classification system, which has no legislative foundation--rather than laws. But I <u>believed</u> what I had often been told, that these rules reflected laws passed by Congress--I was, indeed, prosecuted, though the prosecution was without any legal precedent in the case of such actions--and I also believed that my action was fully justified, virtually obligatory, for reasons all within the framework of the necessity defense.

But in citing my action as an example of a "direct action" that arguably had direct impact in reducing or ending a great evil--thus supporting the reasonableness of a belief by Simpson that his own action might have done likewise--the authors were apparently unaware of an aspect of my experience that was equally relevant to their argument. For as I have repeatedly written, and testified under oath, I would not even have thought of doing what I did, nor been inspired to undertake its risks or the effort required, without the direct example in my mind of actions by others <u>of the exact nature of Simpson's.</u>

It was the specific example of Randall Kehler, whom I met in August 1969 as he prepared to go to prison for two years for refusing to cooperate with his draft board, that put in my head the question: "What can I do--non-violently, truthfully--to help end this war, if I am willing to go to jail for it?" And that question found its answer within weeks, at which point I began to copy the documentary evidence in my safe of governmental deception and law-breaking. I decided to demonstrate the truth about the war to Congress and the public, though I expected to spend the rest of my life in prison for doing it.

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[3] Ibid.

[4] Ibid., fn. 127. In another footnote to the same sentence, the authors comment on the court's conclusion that the war would obviously continue regardless of Simpson's action: "Arguably, however, the appellant could have saved lives and property by merely impeding the war, or shortening it, without ending it."

Only a person speaking from Kehler's position, on his way to prison for choosing to confront a governmental evil as powerfully as he could, could have been heard by me so consequentially. What I heard was a challenge to action that Kehler had hoped someone would hear. My reaction was precisely what most people undertaking such a course hope and intend to help cause. I learned then the power of committed, risk-taking, conscientious, non-violent direct action, because I felt its power on my own life. It is a lesson, and an effect, that I seek to pass on when I take part in such actions. I do them, and accept the costs that sometimes follow for me, because I know they can work. They worked on me.

Of course, the question in others' minds that one seeks to convey by non-violent direct action that risks arrest is not, usually, "Should I be willing to go to jail?" but, "Should I be willing to take some risk?" Most actions individuals in Congress, the media or the public can take to protect others from harm from wrongful, dangerous governmental practices are perfectly legal; indeed, what officials may be most challenged to do is to begin obeying important laws or the Constitution, to cease participating in violations and illegal deceptions ordered by their superiors.

Yet to oppose an official policy, pursued with Presidential authority, no matter how abusive or illegitimate it may be, always involves some degree of risk: risk to job or career, to reputation, to relationships. In such cases, living up to the ideals of one's profession and responsibilities as a democratic citizen requires some courage. Courage is contagious; it benefits from examples.

Nor was Kehler's example the only one to have a direct role in the causal chain that led to the publication of the Pentagon Papers. After more than a year had passed since I had first turned over the study to the Fulbright Committee, no hearings had been held, the President was clearly more committed to continuing the war than before, and the antiwar movement, despairing after the failure of protests following the invasion of Cambodia and the killings at Kent State, had subsided almost to insignificance. For me to move beyond my efforts to stimulate Congressional hearings to seek direct publication in newspapers seemed to offer very little prospect of affecting the political process while increasing my personal risks significantly.

It was at this point in early 1971 that I was asked to be an expert witness, as a former government official, in the trial of the "Minnesota Eight," college students and seminarians who had destroyed draft files just as Brother John Simpson did on Christmas Eve, 1970. I took copies of the Pentagon Papers with me to Minneapolis hoping to present them as documentary evidence to support my testimony that the government had been manipulating the democratic process--and concealing its own law-breaking--by lying to the public, a situation that called for dramatic challenge of the sort the defendants had done.

But the Pentagon Papers did not get into the public record on that occasion. The federal judge refused to allow my testimony on this particular point, when he heard me use the word "lie"; he had earlier warned the defense attorney that he would not entertain expert testimony "critical of the federal government."

It was precisely this sort of consciousness that seemed to me to need changing if our democratic system were to end the Vietnam tragedy, and I saw nothing other than the Pentagon Papers that might do the job. But that meant that I had to be willing to take measures that would sharply increase the risk of spending the rest of my life in jail. That willingness, at that point, was crucially renewed and strengthened in me by the example of the defendants I met and heard that day in court, in particular the seminarian and lay theologian Francis Kroncke. The immediate and direct effect of their testimony was to cause me to reexamine what more I could do to inform the public--at greater personal risk if necessary--and to decide to seek newspaper publication.

Two years later, sitting in court at my own trial, I heard my defense lawyer refer to the appellate case United States v. Kroncke.[5] Listening to him, I learned that the trial court's rejection of Kroncke's necessity defense had been upheld by the 8th Circuit on the grounds that he had failed to demonstrate a reasonable basis for inferring a direct causal chain between his action and the shortening of the war.

My lawyer's point was that my case was different from Kroncke's; it was clear that the publication of the Pentagon Papers had already played a significant role in creating the climate of public awareness and Congressional pressure that had led the Administration, reluctantly, to negotiate the withdrawal of U.S. combat troops from Vietnam.

But knowing--as my lawyer did not, and the 8th Circuit Appellate Court did not--the effect of Kroncke's actions and defense on my own decisions, I could recognize that exactly the same argument applied to his case as well. At the defense table I wrote a note to myself: "I am a link in Frank Kroncke's causal chain."

The chain of effects was not yet ended. The disclosures that ended my trial on May 11, 1973--daily revelations for two weeks of a whole series of criminal actions that the Administration had taken against me to stop further truth-telling about government policy by me or others--further strengthened Congressional determination to cut off spending on American weapons and bombs that were still killing Vietnamese, even though U.S. casualties

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[5] 459 F.2d 697 (8th Cir. 1972). Cited in Lawrence P. Tiffany and Carl A. Anderson, "Legislating the Necessity Defense in Criminal Law," Denver Law Journal, Vol. 52, 1975, p. 844-45, fn. 21. Fn. 20 in this article discusses Simpson.

had ceased. (The first House majority vote to suspend funding on the war, for bombing of Cambodia, came on May 10, the day before my trial was finally dismissed).

Moreover, these same revelations played a major part in impeachment proceedings that ultimately led to the resignation of a Chief Executive who, unlike his replacement, might well have defied the Congressional restrictions on spending in face of the upsurge of fighting in Vietnam in 1975, prolonging the war and U.S. involvement in it indefinitely. His unprecedented replacement in office, in other words, was essential, like the unprecedented cutoff of Congressional funding, to the ending of the war.

Thus, the copying, and much later the publication of the Pentagon Papers can reasonably be held to have contributed, first, to the ending of U.S. casualties in Vietnam, and subsequently to the ending of the war. Both of these effects depended largely on the illegal over-reaction of the Administration to my actions, in fear of the political consequences of better public information on a policy that was still being conducted largely in secret to hide its illegal, reckless and unconstitutional aspects. (This crucial Administration response to my course of truth-telling, while hardly guaranteed or to be counted upon, was neither fortuitous nor unforeseen by me as a possible consequence: likewise the political effects of the exposure of the criminal actions of the Administration.)

I present these judgments here not to glorify the impact of my decisions. Indeed, for the many Americans who believe, unlike myself, that a different course of events, prolonging the war, would have been better for our country and for Vietnam, similar inferences entitle them to hold me partially accountable--along with the movement of which I was part--for results they deeply deplore.

The point here is simply that I agree with these critics on the reasonable inference of a chain of causality. And if a causal chain--not, to be sure, determinate, if such a thing exists in political life, but probabilistic--extends from my actions between 1969 and 1973 to the avoidance of further harm to Americans and Vietnamese from American policy, then the actions of Kehler and Kroncke and many others, like Simpson, were earlier links in that same chain.

As it happens, my own defense in the Pentagon Papers case did not rest on necessity. By the time of trial, it was clear from legal research--contrary to my own understanding in 1969--that by no prior interpretation of law had I broken any statutes by any of my actions. I had not, legally, committed an action of civil disobedience, though I had certainly been willing to do so.

However, had the law been otherwise (and a recent decision in U.S. v. Morrison is the first contrary precedent) and other

circumstances the same, I believe the same actions would have been justified by an argument of necessity. And the same would be true for Kroncke, Kehler, Simpson, Cullen[6] and many other cases in which courts--mistakenly, in my opinion--denied defendants a necessity defense or the presentation of evidence bearing on it.

As I see it, the judges in these cases erred because they were, like most people, unaware of facts of personal experience, of the sort I have reported here, that have empirically linked actions commonly perceived as "symbolic acts of conscience" to other actions more easily recognized as socially or politically efficacious. It is true that many actions of the sort discussed here both express and speak directly to moral considerations and to conscience, in a way that other sorts of actions--which do not involve the risk of jail or other burdens--do not. But I have referred in this deposition to considerations of conscience not as superseding considerations of law but as relevant to the law's demand for reasonable expectations of causality.

Effects on conscience and other aspects of consciousness can and do have causal effect on actions and events, on political behavior within a democratic process that has frequently been found to require, for its proper functioning, just such conscientious action by individual citizens. To a degree and for reasons that many judges seem not to have appreciated, symbolic acts that risk trial and imprisonment are often chosen--and properly so--for their unique and essential <u>efficacy.</u>

Civil disobedience is regarded by some as antithetical to democratic procedure. But our actual political process in America frequently falls short of ideal postulates of democracy. In the Cold War era, officials have often been permitted to pursue certain conceptions of national interest, or sometimes personal or party interest, behind a cloak of secrecy "for national security" that tempted them to ignore the constraints of international or domestic law or the Constitution, in ways that proved as reckless as they were illegal. In the case of the Vietnam War, massive campaigns of public resistance, leading to many indictments and court trials including my own, proved essential to compel government officials to <u>observe</u> the law, along with the public will.

In the spring of 1987, daily hearings on the Iran/Contra scandal demonstrate the prolonged existence of a secret supply effort supporting the contras directed from the White House, in clear violation of Congressional legislation over the last two years forbidding any such involvement or use of funds.

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[6]United States v. Cullen, 454 F.2d 386 (7th Cir. 1971), discussed in Tiffany and Anderson, <u>ibid.</u> p. 844, fn. 21. The defendant Cullen was another seminarian who had a significant influence on my own course of thinking and behavior.

Congressional statutes and the Constitutional requirements of our democratic system have not, in fact, been observed in the making or implementing of Executive policy toward Nicaragua. Nor have the requirements of international law and our treaty obligations, as found recently by the International Court of Justice. Nor the demands of prudence, in averting an impending catastrophe, measured in terms of our experience in Vietnam.

To my knowledge, in the domain of nuclear weapons policy, there has been throughout the nuclear era an equally great divergence between public desires and beliefs, public declarations of official policy, and the demands of law and prudence, on the one hand, and actual, secret governmental policy and practice on the other--with a potential for unparalleled catastrophe.

In neither of these areas have the "normal," legal processes of democracy, by themselves, functioned adequately--or even been permitted to operate, in terms of openness and public awareness--to protect American citizens and other humans from vast, in some cases unprecedented and unlimited risks of harm.

In other contexts, then-existing laws have expressed anachronistic racial or gender or class prejudices in ways that violated the fundamental spirit of the Constitution and Bill of Rights and no longer reflected an evolving public sense of justice. Yet American history reveals that it was not until widespread campaigns of civil disobedience, affecting public awareness and conscience--for example, relating to women's right to vote, civil rights, and the right to unionise--that the electoral and legislative and legal processes began to function to extend and protect these rights in a way we now take for granted as fundamental to democracy. The non-violent actions that were crucial to the extension of real voting rights to women and blacks were as much a part of the democratic process as the subsequent voting.

One of the sources of my own education on these matters has been the testimony by defendants and expert witnesses in trials in which I have been a participant. A notable instance was the testimony of the former Attorney General of the United States, Ramsey Clark, in a trial in Beatty, Nevada, in which I was a defendant for obstructing the entrance to the Nuclear Test Site. Speaking to the same issue I have addressed here, the actual causal effects of civil disobedience as shown by past experience, he testified on its effects on policymaking during his own time in office.

Clark told the judge that in March of 1965, 1% of blacks in the state of Alabama were registered to vote. That was the month in which blacks held a march from Selma to Montgomery, in which hundreds of participants were arrested and Violet Liuzzo was killed. Clark, as Attorney General, was ordered to go to Selma to take charge of the National Guard, called out to protect a later march in which Martin Luther King participated. By the end of

that later march, he said 2% of blacks were registered--"not very many, but a 100% increase in the course of the month."

Testifying under oath as an expert witness, the former Attorney General stated:

"Without the marches"--which, in Alabama at that time, were treated as civil disobedience--"the Voting Rights Act of 1965 would never have passed."

In my understanding as both a student of and participant in such campaigns, in none of these cases is the public movement, and specifically the tactic of civil disobedience, properly to be seen as an "alternative" to, or a substitute for, the more traditional and unarguably legal processes of our political system: but as a sometimes necessary complement to such processes, stimulating and reinforcing them in a way that is not infrequently essential to achieving urgent, legitimate public ends.

In my own experience, participants in civil disobedience virtually never conceive of these particular actions as the sole effective means, by themselves, of averting specific harms, or as sufficient in themselves to do so. The issue, from the perspective of these actors, is not whether other approaches, unchallengeably legal, exist to further their aims, but whether these unquestionably necessary approaches, by themselves and excluding dramatic campaigns of civil disobedience, are <u>adequately</u> effective, whether they can "work" or work <u>in time</u> to avoid great harm without the historically-proven catalyst of committed, conscientious, risk-taking exemplary action.

These considerations bear on two other elements of the necessity defense, the "lack of legal alternatives" and the "imminence" of the harms to be averted. Again, I speak from my own experience, but not only mine, in saying that it is the perceived <u>insufficiency</u> of other means, by themselves--not their unavailability or irrelevance--that impels one to <u>add</u>, in some circumstances, tactics that risk arrest to a program of social action. And the urgency of such means reflects the prolonged time required to mobilize political efforts--perhaps measured in months or years--to avert deaths and injuries that will not be averted at

all without campaigns that include these dramatic elements.[7]

What such actions can realistically be hoped to achieve may be best illustrated by an action in which I participated on April 8, 1986, when half a dozen citizens intruded onto the Nevada Test Site, attempting to obstruct a scheduled nuclear test explosion by putting our bodies as close to Ground Zero as possible. We were arrested within four miles of Ground Zero; the test was, in fact, delayed, and delayed again the next day when another team likewise penetrated.

We had been authoritatively warned, and believed, that we would be charged with a federal violation of the Atomic Energy Act and could expect a sentence of at least nine months in jail. None of us took this lightly. But this test ("Mighty Oak") was the one--the first U.S. test after March 31, 1986, the expiration date then set for the unilateral moratorium on Soviet nuclear testing--which threatened to have the effect of causing the Soviets to resume testing, after an eight-month suspension which the Soviets had promised to continue indefinitely if joined by the United States.

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[7]See Tiffany and Anderson, ibid, p. 846:

"In Aldrich v. Wright the court observed: 'The term "imminent" does not describe the proximity of the danger by any rule of mechanical measurement...The law does not fix the distance of time between the justifiable defense and the mischief, for all cases, by the clock or the calendar. The chronological part of the doctrine of defense, like the rest of it, is a matter of reasonableness; and reasonableness depends on circumstances.'

"The strongest recognition of this view is found in the commentary to the Missouri Proposed Code which, being patterned after New York's, includes the 'imminent' requirement:

"'[I]t must be remembered that what constitutes "emergency measure" and "imminent" does not depend solely on the interval of time before the injury sought to be prevented will occur. Additional circumstances of the particular fact situation must also be evaluated. Thus, if under the circumstances, the mere passage of time is such that a reasonable man would perceive no viable alternatives to his present course of conduct the fact that the injury sought to be prevented will not take place for some time hence, e.g., six hours, will not prevent the use of the defense of justification under this section, provided it is otherwise available.'"

In the case of the Vietnam War, Americans and Vietnamese were dying every day. But it was six years, not six hours, from the time I copied the Pentagon Papers in 1969 before the war financed by American taxpayers was ended; and it was never clear to me that it could have been stopped much sooner, realistically, nor that without the risks and trials accepted by many Americans, including myself, it could have been stopped at all.

Each of us was willing to make a considerable personal sacrifice to protest and delay this particular test. In the early morning of April 8, the risks to our country and the world associated with resumption of a two-sided, unrestricted nuclear arms race could not have seemed more "imminent."

As it worked out, the test was conducted, two days later (with significant venting of radioactivity); after the Chernobyl disaster two weeks later the Soviet Union chose to extend their moratorium again; and lesser charges than predicted were brought against us. But this was a rare occasion on which there was immediate evidence that our message had been heard on Capitol Hill, with direct effect on the legislative process.

On the evening of our arrest, soon after I was released from custody, I was told by Christopher Paine, a key legislative aide to Representative Markey, phoning from Washington, "You've got to keep those actions going! This one has galvanized the Hill: the people on our side."

He named several Congresspersons who had already been the most active in pressing for the U.S. to join the Soviet moratorium and to negotiate a Comprehensive Test Ban. "You've moved this issue onto the agenda; it's been on the back burner up till this. Now our supporters are asking themselves, 'If there are people out there that care this much, if they're willing to take a risk of radioactivity and prison: Are we doing as much as we should?'"

"As a direct result they've decided today to move the Schroeder Bill [calling for a cutoff of funding for U.S. nuclear testing so long as the Soviets were not testing]--which will never get out of House Armed Services as a bill--out onto the floor for a vote, as an amendment. But you've got to keep the pressure up, to keep attention on this issue. You've got to delay this test as long as you can."

"Do you know what you're asking? We're expecting nine months in prison for this," I told him. "I don't know how many people we can find who are willing to do that." I didn't know that as I spoke, another group was moving onto the site: with many to follow.

Four months later, the House voted for the first time on an amendment to cut off all funds for testing nuclear weapons over one kiloton so long as the Soviets did not test. It passed by a large majority. Had it survived the House-Senate Conference and a possible Presidential veto, U.S.-Soviet nuclear testing, a major part of the arms race, would have been over, perhaps forever. But on the eve of the hastily-scheduled Iceland Summit, the House responded to White House pleas to defer this challenge to Presidential policy, and withdrew the measure from Conference. It was passed again by the House in the spring of 1989 and in 1988, and a comparable bill has been voted on in the Senate. Both House and Senate bills will be reintroduced this year.

According to Paine--who played a key role in drafting and coordinating both the House and Senate versions of the amendment--the 1990's may well see the Congressionally-mandated ending of most nuclear testing, on the basis of a mutual U.S.-Soviet moratorium. It would mean the ending of a major part of the nuclear arms race in much the same way--via protest, lobbying and Congressional budgetary action--that the Vietnam War was ended: perhaps the only way that either could be ended.

Once the process of seeking co-sponsors was underway in 1986, Paine told me in retrospect, it was an "internal Congressional process" that moved the measure ultimately to a successful House vote in August. But without the dramatic example of the Ground Zero actions in April, he judged, "the process would never have gotten started." Its supporters in Congress would not have taken the initiative to move it onto the floor; they would not have taken the risks of an embarrassing failure, the risks of opposing the President.

It is for that causal impact on matters of the gravest urgency and human consequence that people put their bodies in the way of tests of first-strike weapons at Cape Canaveral and Vandenberg and Nevada, risk arrest and sometimes go to prison. Or sometimes, when the jury hears the evidence and the argument of necessity, are acquitted.

Actions risking arrest have the proven capacity--more than words alone--to communicate courage, a courage that is contagious, that can inspire representatives in Congress to live up to their responsibilities under the Constitution and international law in confronting an Executive branch that is violating both.

As I understand it, that intent underlies the actions by defendants in this trial. I believe that much experience shows such actions to be effective, appropriate and necessary, therefore legitimate and legal.